

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KEVIN KILELEE,

Plaintiff,

v.

DOW CHEMICAL COMPANY,

Defendant.

Civil Action No. 04-CV-12130 MEL

PLAINTIFFS MOTION FOR LEAVE OF COURT TO RESPOND TO DEFENDANTS
MOTION TO DISMISS and FILE AN AMENDED COMPLAINT

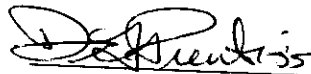
Now comes the Plaintiff, Kevin Kilelee, and through his attorney respectfully requests to January 14, 2005 to file a response to Defendants Motion to Dismiss and/or amend his complaint stating a cause of action under ERISA and states as his reasons:

1. The defendant has not filed an answer nor has discovery commenced.
2. Plaintiff intends to oppose defendants motion to dismiss by filing an amended complaint stating ERISA causes of action.
3. Plaintiff requests additional time to prepare an amended complaint.
4. The DOW employees pension plan provides a short time period for a retired employee to bring an appeal of the plan administrators decision.
5. A dismissal without an opportunity to amend his complaint would be prejudicial to the plaintiff.

WHEREFORE the plaintiff respectfully requests to January 14, 2005 to file a response to defendants motion to dismiss and an amended complaint.

Respectfully submitted,
KEVIN KILELEE

By his attorneys




David G. Prentiss, Esq. (BBO #405625)
Law Offices of David G. Prentiss, P.C.,
Bank of America Building, 4th Floor
700 Pleasant Street, Fourth Floor
New Bedford, MA 02740

Certification of Compliance with Local Rule 7.1

Undersigned counsel for KILELEE hereby certifies that a telephonic conference was held on December 17, 2004 with Kristin G. McGurn counsel for DOW and a follow up message was left with her office on December 22, 2004 in accordance with Local Rule 7.1.(A)(2) in an attempt to narrow the difference between he parties or eliminate the need for this Motion. Undersigned counsel represented KILELEE in the conference. Although the parties conferred in good faith, the issues raised in this motion were not resolved.

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by first class mail on December 22, 2004



David G. Prentiss